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Briefing note

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IN THIS WEEK'S NEWS

- Benchmarks Regulation: ESMA consults on draft technical standards
- ESMA consults on technical standards under SFTR and amendments to related EMIR RTS
- EBA publishes final guidelines on remuneration of sales staff
- CRR: EBA publishes guidelines and final draft RTS on harmonising the definition of default
- CRR: EU Commission adopts RTS on data waiver permissions for IRB approach
- CRR: Commission Implementing Regulation amending ITS on supervisory reporting of institutions published in Official Journal
- BRRD: RTS on detailed records of financial contracts published in Official Journal
- EuSEF and EuVECA funds: EU Council Presidency publishes compromise text
- Basel Committee publishes FAQs on the supervisory framework for measuring and controlling large exposures
- Basel Committee publishes final guidelines on supervision and financial inclusion
- BoE consults on code of practice on the governance of recognised operators of payment systems
- MiFID2: FCA launches third consultation on implementation
- FCA and PRA publish rules on regulatory references and consult further on accountability, remuneration and whistleblowing
- FINMA consults on securities trading circulars
- FINMA consults on 'Disclosure – banks' circular
- FINMA consults on partial revision of Banking Insolvency Ordinance
- MAR: Order amends AMF General Regulation for implementation
- AMF and ACPR launch simplified licensing procedures for UK-based institutions
- CSSF issues regulation on setting of countercyclical buffer rate for fourth trimester of 2016
- Bank of Spain maintains countercyclical capital buffer at 0%

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- Bank of Italy publishes amendments to Circular on supervisory reporting obligations for banks and financial intermediaries
- Bank of Italy publishes amendments to supervisory regulations to implement Mortgage Credit Directive
- HKEX publishes draft amendments to rules for Shenzhen Connect
- Bill amending Thai Securities and Exchange Act approved by National Legislative Assembly
- Federal Reserve Board invites public comment on proposed rule restricting physical commodity activities of financing holding companies
- ASIC temporarily extends licensing relief for foreign regulated entities
- Recent Clifford Chance briefings: China upgrades rules for credit derivatives; Australia's whistleblower regime; and more. Follow this link to the briefings section.

Benchmarks Regulation: ESMA consults on draft technical standards

The European Securities and Markets Authority (ESMA) has published a consultation paper on draft regulatory technical standards (RTS) and implementing technical standards (ITS) under the Benchmarks Regulation.

The key provisions of the draft technical standards cover both benchmark contributors and administrators, and relate to:

- procedures, characteristics and positioning of the oversight function;
- appropriateness and verifiability of input data;
- transparency of the methodologies applied;
- governance and control requirements for supervised contributors;
- provisions for significant and non-significant benchmarks; and
- provisions for recognition by third country administrators.
- Each chapter includes a summary of the relevant provisions and their objectives, an explanation of related policy issues and the draft text of each technical standard.

Comments are due by 2 December 2016. ESMA intends to submit the final draft RTS and ITS to the EU Commission by 1 April 2017.

ESMA consults on technical standards under SFTR and amendments to related EMIR RTS

ESMA has launched a consultation on draft regulatory technical standards (RTS) and implementing technical standards (ITS) under the Securities Financing Transactions Regulation (SFTR).

The draft technical standards include rules on:

- the procedure and criteria for the registration as a trade repository under the SFTR;
- the use of internationally agreed reporting standards, the reporting logic and the main aspects of the structure and content of securities financing transaction (SFT) reports;
- requirements on transparency of data, data collection, aggregation and comparison; and
- the levels of access for different competent authorities.

The consultation also sets out proposals for certain amendments to the existing RTS under the European Market Infrastructure Regulation (EMIR) in order to take into account legal developments and ensure consistency, where relevant, between the EMIR and SFTR frameworks.

Comments to the consultation close on 30 November 2016. ESMA will use the feedback to finalise it draft technical standards which are due to be submitted to the EU Commission by the end of the first quarter or beginning of the second quarter of 2017. The finalised SFTR implementing measures would then be expected to apply from 2018.

EBA publishes final guidelines on remuneration of sales staff

The European Banking Authority (EBA) has published its final guidelines on remuneration of sales staff. The guidelines have been developed to address significant cases of misconduct and misselling, a key underlying driver of which was identified by the EBA as poor remuneration policies and practices.

The EBA launched a consultation on draft guidelines in December 2015 and has made certain amendments to the final guidelines in response to feedback received. The final guidelines include separate sets of guidelines for approval and monitoring of remuneration practices and policies and amendments to clarify:

- the scope of information to be recorded by institutions in order to ensure compliance with the guidelines;

- that delegation by the management body is possible to the extent that it retains ultimate responsibility for the institution's remuneration policies and practices; and
- the need to obtain advice on remuneration policies and practices is limited to institutions that have established a remuneration committee.

The guidelines will be translated into the official EU languages and published on the EBA website, following which competent authorities will have two months to report whether they comply with the guidelines. The EBA has postponed the application date to 13 January 2018 in order to facilitate national implementation and to provide market participants with sufficient time to make necessary changes to their policies and practices.

CRR: EBA publishes guidelines and final draft RTS on harmonising the definition of default

The EBA has published final guidelines and final draft regulatory technical standards (RTS) under Article 178 of the Capital Requirements Regulation (CRR) on the definition of default.

The guidelines specify all aspects related to the application of the definition of default of an obligor. The EBA has identified differing practices used by institutions as regards the definition of default and the guidelines set out detailed clarification on the application of the definition, which includes aspects such as:

- the days past due criterion for default identification;
- indications of unlikeliness to pay;
- conditions for a return to non-defaulted status;
- treatment of the definition of default in external data;
- application of the default definition in a banking group; and
- specific aspects related to retail exposures.

The EBA has performed a qualitative and quantitative assessment (QIS) of the potential impact of the guidelines on institutions' capital requirements and has published the final report alongside the guidelines.

The draft RTS relate to the conditions according to which competent authorities should set the materiality threshold for obligations past due. The RTS set conditions in relation to both the structure and the application of the materiality threshold, which will be required to be composed of both an absolute and relative threshold.

The guidelines will apply from 1 January 2021. The EBA expects the RTS to be implemented by end-2020 at the latest, but has recognised that institutions will need sufficient implementation periods to allow changes to be introduced in an efficient manner. For IRB banks, the implementation should be based on individual plans agreed between institutions and their competent authorities.

CRR: EU Commission adopts RTS on data waiver permissions for IRB approach

The EU Commission has adopted a Delegated Regulation supplementing the CRR and setting out RTS specifying conditions for data waiver permissions following a consultation by the EBA.

The RTS set out the specification of the conditions according to which competent authorities may grant permission to institutions to use relevant data covering a two year period rather than a five year period for the probability of default, own-loss given default and own-conversion factor estimates for certain types of exposures when they implement the internal ratings based (IRB) approach. Due to the EBA's recognition of increased uncertainty of the estimation of risk parameters that result from the use of a short data history, the RTS introduce conditions to limit the use of the data waiver. Moreover, the waiver would not be allowed after five years have elapsed from the initial permission granted to an institution.

The RTS will enter into force on the twentieth day following their publication in the Official Journal.

CRR: Commission Implementing Regulation amending ITS on supervisory reporting of institutions published in Official Journal

A Commission Implementing Regulation (2016/1702) amending Implementing Regulation 680/2014 on implementing technical standards (ITS) on the supervisory reporting of institutions under the CRR has been published in the Official Journal.

The Implementing Regulation replaces certain templates and makes amendments to certain instructions, including definitions used for the purposes of institutions' supervisory reporting, for reasons of legal clarity.

The Regulation enters into force on 19 October 2016 and will apply from 1 December 2016.

BRRD: RTS on detailed records of financial contracts published in Official Journal

A Commission Delegated Regulation (2016/1712) setting out RTS on the requirement to maintain detailed records of financial contracts under the Bank Recovery and

Resolution Directive (BRRD) has been published in the Official Journal.

The RTS set out the minimum set of information to be maintained in detailed records of financial contracts by relevant institutions or entities and the circumstances in which the requirement should be imposed by competent authorities.

The RTS will enter into force on 14 October 2016.

EuSEF and EuVECA funds: EU Council Presidency publishes compromise text

The EU Council Presidency has published a compromise text on the proposal for a Regulation amending the Regulation on European venture capital (EuVECA) funds and the Regulation on European social entrepreneurship (EuSEF) funds.

Basel Committee publishes FAQs on the supervisory framework for measuring and controlling large exposures

The Basel Committee on Banking Supervision (BCBS) has published a frequently asked questions (FAQ) document on the global supervisory framework for measuring and controlling large exposures.

BCBS has reviewed the appropriateness of setting a large exposure limit for exposures to qualifying central counterparties (QCCPs) related to clearing activities and the impact of the large exposures framework on interbank exposures to ensure there are no unavoidable adverse consequences for the implementation of monetary policy. Following the review, BCBS has announced that it will maintain the treatment for both types of exposure and, as a result, from 1 January 2019 the framework will:

- exempt from the large exposure limit exposures to QCCPs relating to central clearing; and
- apply the large exposure limit to interbank exposures.

Details on these two element and responses to FAQs on the large exposures framework are available in the FAQs.

Basel Committee publishes final guidelines on supervision and financial inclusion

The BCBS has published its final guidance on the application of the Core Principles for Effective Banking Supervision to the regulation and supervision of institutions relevant to financial inclusion. The BCBS's Core Principles are the minimum standard for sound prudential regulation and supervision of banks and banking systems.

This follows a consultation on draft guidance published in December 2015 and builds on previous work by the BCBS. The guidelines are intended to provide additional guidance on the application of 19 of the total 29 Core Principles for effective banking supervision to the supervision of financial institutions engaged in serving the financially unserved and underserved. The guidelines also specify essential and additional criteria associated with the Core Principles that have specific relevance to financial inclusion.

BoE consults on code of practice on the governance of recognised operators of payment systems

The Bank of England (BoE) has published a consultation paper on a proposed code of practice and supervisory statement on the governance of recognised operators of payment systems (RPSOs) under section 184 of the Banking Act 2009.

The proposed code would be binding on RPSOs and if an RPSO fails to comply with its requirements, the BoE may take enforcement action. Alongside the code, the BoE proposes a supervisory statement to set out how the BoE expects RPSOs to comply with the code. Taken together, the documents will set out the BoE's minimum requirements and expectations for governance in relation to the RPSOs to which they apply. The BoE does not propose that the code will apply to recognised payment systems that are operated by a recognised clearing house or central securities depository (CSD), as they are or will be subject to other requirements such as those under EMIR and the Central Securities Depositories Regulation (CSDR).

The BoE intends to consult on further parts of the code and further supervisory statements on expectations and requirements in other areas at a later date. Comments on governance and related issues covered in the consultation are due by 2 December 2016.

MiFID2: FCA launches third consultation on implementation

The Financial Conduct Authority (FCA) has launched its third consultation on the implementation of MiFID2. The consultation paper (CP16/29) is split into two parts, one on conduct of business issues and the other covering a range of issues not covered in the previous two FCA consultations (CP15/43 and CP16/19). As the proposals will affect a wide range of firms, the FCA has indicated which firms the proposals are most likely to be relevant to at the start of each chapter.

The conduct of business part of the consultation follows up on issues raised in a discussion paper on developing the implementation of the MiFID2 conduct of business rules and organisational requirements (DP15/3) published in March 2015. The proposals relate to Handbook changes to implement rules on:

- inducements, including adviser charging, and inducements and research;
- client categorisation, in particular relating to local authorities;
- disclosure requirements;
- independence standards;
- suitability rules;
- the appropriateness test;
- dealing and managing standards;
- investment research; and
- other conduct issues, including requirements relating to written basic agreements and changes to the Conduct of Business Sourcebook (COBS) specialist regimes for firms carrying out collective portfolio management activity.

The second part of the consultation paper relates to:

- product governance provisions;
- knowledge and competence requirements;
- telephone recording and electronic communications;
- supervision, authorisation and approved persons;
- perimeter guidance on scope changes in MiFID2, including foreign exchange derivatives, emission allowances, commodity derivatives and exemptions for professional firms trading commodity derivatives; and
- consequential changes to the Handbook based on the proposals set out in CP16/9.

Comments on the consultation are due by 4 January 2017, except for proposals in Chapter 16 on the supervision manual (SUP), authorisation and approved persons which has a deadline of 31 October 2016.

A fourth FCA consultation on the implementation of MiFID2 is expected to be published later in 2016. The FCA will publish its final policy statement covering all aspects of its MiFID2 implementation in the first half of 2017.

FCA and PRA publish rules on regulatory references and consult further on accountability, remuneration and whistleblowing

The FCA and Prudential Regulation Authority (PRA) have both published policy statements and consultation papers on accountability, remuneration and whistleblowing requirements.

Among other things, final policy statements on regulatory references have been published by both regulators (FCA PS16/22 and PRA PS27/16), which clarify the information that firms are required to share with one another as part of recruiting to key roles.

The FCA has also launched consultations on proposed measures to strengthen the Senior Managers' and Certification Regime (SM&CR), which was introduced in March 2016 and will be extended to all regulated financial services firms from 2018. The consultations cover:

- whistleblowing requirements for UK branches of overseas banks (CP16/25), which proposes:
- a new requirement to tell UK based employees about the whistleblowing services offered by the FCA and PRA; and
- for UK branches of overseas banks that sit alongside a UK-incorporated bank subject to the FCA's whistleblowing rules, a new requirement for UK-based staff to be informed of the subsidiary's whistleblowing arrangements;
- guidance for senior managers on the duty of responsibility, under which the FCA and PRA can take enforcement action against Senior Managers in relation to responsibility for activities in which their firm contravenes a regulatory requirement, including amendments to the Decision Procedure and Penalties Manual (DEPP) (CP16/26);
- proposals to extend the application of the Code of Conduct sourcebook (COCON) to standard non-executive directors in banks, building societies, credit unions and dual-regulated investment firms (relevant authorised persons or RAPs) and Solvency II firms (CP16/27); and
- remuneration in CRD 4 firms (CP16/28), including proposals to bring some of the FCA's provisions in line with the European Banking Authority (EBA) guidelines on sound remuneration policies.

Comments on the consultations are due by 9 January 2017, except for CP16/28 on remuneration in CRD 4 firms which closes on 28 November 2016.

Alongside these publications the FCA has also published a discussion paper (DP16/4) on the treatment of the legal function under the SM&CR; comments are due by 9 January 2017.

To coincide with the further policy developments, the FCA has taken stock of the first six months of the SM&CR in four feedback statements following in-depth supervisory reviews of the Statements of Responsibilities (SoRs) and responsibilities maps supplied with grandfathering notifications for firms, which individually consider:

- all UK banks, investment firms and building societies;
- branches of banks from outside the EEA;
- branches of banks from within the EEA; and
- credit unions.

The PRA has also launched its consultation (CP34/16) on a series of targeted improvements to the Senior Managers Regime (SMR) and Senior Insurance Managers Regime (SIMR), including proposed updates to supervisory statement SS28/15 and SS35/15 to set out the PRA's expectations on the duty of responsibility.

On remuneration, the PRA has also published final rules on buy-outs of variable remuneration (PS26/16) and is consulting on a consolidated approach document on remuneration (CP33/16), which will also confirm the PRA's expectations of firms in relation to the EBA guidelines on sound remuneration policies from 1 January 2017. A PRA consultation on whistleblowing requirements for UK branches of non-EEA banks (CP35/16) has been published setting out similar proposals to those set out by the FCA.

Comments on the PRA's consultation on its expectations on remuneration are due by 28 November 2016. Comments on the other PRA consultations are due by 9 January 2017.

FINMA consults on securities trading circulars

The Swiss Financial Market Supervisory Authority (FINMA) has launched a consultation on a full revision to Circular 2008/11 on disclosure requirements for securities transactions, partial revision of Circular 2008/4 on securities journals and a new circular on organised trading facilities.

The circulars clarify FINMA's expectations for disclosure requirements for securities transactions and the obligations of operators of organised trading facilities under the Financial Market Infrastructure Act (FMIA), the Financial Market Infrastructure Ordinance (FMIO) and the FINMA Financial Market Infrastructure Ordinance (FMIO-FINMA), which entered into force on 1 January 2016.

The revised circulars on disclosure requirements for securities transactions and securities journals set out, for example, FINMA's interpretation of the extended disclosure requirements on beneficial owners of securities transactions and on derivatives with underlying securities listed at a Swiss trading venue.

It is the first time that organised trading facilities have been regulated, and the circular details the obligations of the operators of such facilities and sets out the concept of an organised trading facility as a trading facility which has standardised, binding rules and where:

- contracts are concluded under the rules; and
- participants must take or be able to take the initiative to carry out the trade.

Comments on the consultation are due by 9 November 2016.

FINMA consults on 'Disclosure – banks' circular

FINMA has launched a consultation on the draft Circular 'Disclosure – banks', which was revised in line with revisions to the 'too big to fail' regulations (TBTF) for systematically important banks set out in the Capital Adequacy Ordinance (CAO).

In force since 1 July 2016, the revised TBTF regulations include capital requirements for the continuity of services and additional loss-absorbing capital (going concern and gone concern requirements). Leverage and capital ratio requirements will need to be fulfilled by 2020. Minor adjustments have also been made to disclosure requirements for the extended countercyclical capital buffer and capital buffer for non-systematically important banks.

The revised Circular sets out disclosure standards and how these can be met during and after the transition period. Banks are required to publish data using the prescribed tables provided by FINMA to ensure consistency and adequate disclosure. Revised disclosure requirements will apply to data reported as of 31 December 2016.

The consultation remains open until 7 November 2016.

FINMA consults on partial revision of Banking Insolvency Ordinance

FINMA has launched a consultation on the partial revision of the Banking Insolvency Ordinance (BIO) to address the implementation of Article 12 para. 2bis of the Banking Ordinance (BO).

Article 12 para. 2bis of the BO came into force on 1 January 2016 and requires Swiss banks and securities dealers, before amending existing contracts or entering into new contracts governed by foreign law or subject to foreign

jurisdiction, to obtain an acknowledgement in the contract by the counterparty that FINMA has the power to postpone the termination of the contract in accordance with Article 30a of the Banking Act.

The contract adjustment requirement will only apply to contracts continuation of which is essential for banks requiring restructuring. The revised draft BIO sets out an exhaustive list of types of contracts that would be in scope, such as contracts governing the sale, purchase, lending and repurchase of securities. This list has been aligned with the definition of 'financial contracts' in the EU Bank Recovery and Resolution Directive (BRRD). Implementation provisions create exemptions for group companies of Swiss banks that are not active in the financial sector and contracts with financial market infrastructures and central banks.

The consultation period ends on 8 November 2016. The revised provisions are scheduled to enter into force on 1 March 2017 and the implementation deadline is six months after that date, unless the counterparties are banks or securities dealers, in which case the deadline will be three months.

MAR: Order amends AMF General Regulation for implementation

A Ministerial order, dated 14 September 2016, amending the Autorité des marchés financiers (AMF) General Regulation in order to implement the EU Market Abuse Regulation (MAR) has been published in the French Official Journal. In particular, the order authorises the suppression of Book VI on market abuse and amendments to Book II on issuers and financial disclosure, and public disclosure of inside information.

The French version of the AMF General Regulation has already been updated with the changes in order to ensure clarity for market participants.

To complete the implementation of MAR, further amendments will be made to the AMF General Regulation in relation to issuers offering to buy back their own shares and investment recommendations, subject to the adoption of the 'Sapin II' draft bill on transparency, anti-corruption and economic modernisation, which will introduce a new framework to prevent, detect and punish corruption in France.

AMF and ACPR launch simplified licensing procedures for UK-based institutions

The AMF and Autorité de contrôle prudentiel et de résolution (ACPR) have published a joint statement on shared procedures to help UK-authorised institutions set up more easily and quickly in France. The publication has been issued in the context of Brexit and a commitment to make the Paris financial market more appealing.

In order to ensure that applications are processed smoothly, an English-speaking contact will be appointed by the ACPR to guide applicant firms through the procedure and provide all necessary information during the pre-authorisation period.

The AMF has also established a dedicated welcome programme named 'Agility' for UK-based management firms and Fintech companies authorised by the UK Financial Conduct Authority (FCA), wishing to apply for an authorisation from the AMF.

The Agility programme includes:

- a fast track pre-authorisation process named "2WeekTicket" through which relevant firms can begin the process of opening offices in France within two weeks;
- access to English-speaking 'coaches' at the AMF throughout a monitoring period starting from the pre-authorisation period until six-month after the authorisation is granted, to help applicants understand regulations and laws applicable to their planned activities; and
- coordinated access to a single contact person at the AMF and ACPR for innovative companies offering services that fall under the jurisdiction of both regulators.

The AMF has committed to deliver full authorisation giving access to the European passport within two months of obtaining pre-authorisation, provided that the application file is duly completed and the applicant meets all of the requirements.

CSSF issues regulation on setting of countercyclical buffer rate for fourth trimester of 2016

The Luxembourg financial sector supervisory authority, the Commission de Surveillance du Secteur Financier (CSSF), has published a new regulation (No 16-05, dated 26 September 2016) on the setting of the countercyclical buffer rate (taux de coussin contracyclique) for the fourth trimester of 2016.

The new regulation follows the Luxembourg Systemic Risk Committee's recommendation of 22 August 2016 (CRS/2016/006) and maintains a 0% countercyclical buffer rate for relevant exposures located in Luxembourg for the fourth trimester of 2016.

The new regulation entered into force on 1 October 2016.

Bank of Spain maintains countercyclical capital buffer at 0%

The Bank of Spain has announced its decision to maintain the value of the countercyclical capital buffer (CCyB) applicable to credit exposures in Spain in the fourth quarter of 2016 at 0%. This measure has been adopted pursuant to the powers granted to the Bank of Spain by Law 10/2014 on the regulation, supervision and solvency of credit institutions, and by Royal Decree 84/2015 implementing that Law.

The Bank's analysis of indicators warning of emerging systemic risk associated with excessive credit growth currently advises against setting the CCyB above 0%. The Bank also found that other core indicators, along with all the information analysed, continue to provide mutually consistent signals that support the decision not to activate the CCyB at this time.

Bank of Italy publishes amendments to Circular on supervisory reporting obligations for banks and financial intermediaries

The Bank of Italy has published an amendment (no. 62) to its Circular no. 154 of 22 November 1991 relating to supervisory reporting obligations applicable to the banks and financial intermediaries and the reporting templates to be used to submit regulatory information.

The amendment is intended to provide a collection of reporting templates to ensure an effective flow of information and the amended Circular sets out detailed instructions for the production and submission of certain regulatory information.

The Circular also sets out details and procedures relating to information from the Bank of Italy addressed to banks and financial intermediaries.

Bank of Italy publishes amendments to supervisory regulations to implement Mortgage Credit Directive

The Bank of Italy has published amendments to Circular no. 285 of December 2013 and Circular no. 288 of April 2015 to implement Articles 120-undecies and 120-duodecies of the Italian Banking Act (Legislative Decree no. 385/1993) in order to transpose the provisions of the Mortgage Credit Directive (2014/17/EU - MCD).

Among other things, the new provisions are intended to set out detailed measures in relation to the mandatory assessments that financial institutions must perform for the purposes of providing consumers mortgage loans. Article 120-undecies of the Italian Banking Act, which deals with creditworthiness checks, has been implemented by making express reference to the guidelines on creditworthiness assessments published by the European Banking Authority (EBA) on 19 August 2015. Under the assessments, financial institutions will be requested to monitor consumers' income capacity, income history and any other factor that could influence the ability to comply with the applicable contractual obligations.

Moreover, these second-level provisions deal with role and functions of the management bodies in the assessment process of immovable properties, the assignment of the evaluation to an external expert, its independence and professional requirements.

HKEX publishes draft amendments to rules for Shenzhen Connect

As part of the market communication plan for Shenzhen-Hong Kong Stock Connect (Shenzhen Connect), the Stock Exchange of Hong Kong Limited (SEHK) and Hong Kong Securities Clearing Company Limited (HKSCC), which are wholly-owned subsidiaries of Hong Kong Exchanges and Clearing Limited (HKEX), have published proposed amendments to the Rules of the Exchange (SEHK Rules), the General Rules of Central Clearing and Settlement System (CCASS Rules) and the CCASS Operational Procedures (CCASS OPs) with a view to facilitating their participants' business and technical preparation for the Shenzhen Connect programme. HKEX has also revised its information book and updated its frequently asked questions (FAQs) on Shenzhen Connect.

The draft amendments to the SEHK Rules, CCASS Rules and CCASS OPs mainly expand the coverage of the current SEHK and CCASS Rules and CCASS OPs to reflect differences in trading arrangements and market practices between Shanghai and Shenzhen. The information book which currently contains details on Shanghai-Hong Kong Stock Connect (Shanghai Connect) has been revised to include business and operational details of Shenzhen Connect, while the FAQs for market participants and investors have been consolidated.

HKEX expects that the Hong Kong market should be ready for the implementation of Shenzhen Connect in the second half of November 2016, although the commencement Shenzhen Connect is subject to market readiness and approval by the China Securities Regulatory Commission (CSRC) and the Hong Kong Securities and Futures Commission (SFC).

Bill amending Thai Securities and Exchange Act approved by National Legislative Assembly

On 1 September 2016, the National Legislative Assembly approved a bill that will amend the Securities and Exchange Act. The bill is pending Royal Assent and will come into force after it has been announced in the Royal Gazette, which is expected within the next few months.

The Amendment Act is intended to align regulatory requirements for securities offerings, market misconduct offences and enforcement measures to international standards and will extend the prohibition on insider-trading to the use of derivatives contacts to obtain the benefit of inside information. Other key amendments include:

- prescribing additional offences for market misconduct (including tipping-off, front-running and improper use of nominee accounts for securities trading) as well as additional legal assumptions for inside persons and the commission of market misconduct offences;
- amending criminal penalties to be appropriate for each criminal offence and the provisions relating to the assumption of criminal liability of the management to be in line with the constitutional court's decision;
- imposing civil penalties for certain offences, such as market misconduct and non-compliance by directors or executives with statutory fiduciary duties;
- allowing a person who is not the issuing company (e.g. trust settlor or trustee) to apply for approval from the SEC for offering certain types of newly issued securities;
- allowing the SEC to impose different but appropriate requirements or provide an exemption for a company established under foreign law which has similar investors protection standards as those stipulated by the SEC from a duty to comply with certain requirements specified in the Securities and Exchange Act;
- authorising the Capital Market Supervisory Board to issue a notification to relax or waive certain disclosure requirements imposed on securities issuers;
- imposing duties on directors, managers, persons who hold management position and auditors of an issuing company to prepare and submit a securities holding report for the holding of derivatives contacts pursuant to the Derivatives Act which relate to securities (in addition to listed securities) and to aggregate the securities and derivatives contracts held by cohabiting partners and minor; and
- allowing securities companies to invest or hold investment units of other mutual funds which are managed by them.

Federal Reserve Board invites public comment on proposed rule restricting physical commodity activities of financing holding companies

The Federal Reserve Board (FRB) has requested public comment on a proposed rule to reinforce existing requirements and restrictions on the physical commodity actions of financial holding companies (FHCs).

The proposed rule would:

- amend risk-based capital requirements to increase the risk weights associated with physical commodity and merchant banking activities of FHCs;
- revise the cap on physical commodity holdings of FHCs to include commodities held in the consolidated organization and clarify certain existing limitations on those activities;
- rescind the findings underlying the FRB's orders authorizing five FHCs to engage in energy management and energy tolling activities and provide those firms a transition period to unwind or divest these activities;
- remove copper from the list of precious metals that bank holding companies are permitted to own and store; and
- increase public transparency regarding physical commodity activities of FHCs through more regulatory reporting.

Comments on the proposed rule will be accepted for 90 days after publication in the Federal Register.

ASIC temporarily extends licensing relief for foreign regulated entities

The Australian Securities and Investments Commission (ASIC) has extended the class order relief for entities that are regulated by certain foreign regulators (US, UK, Singapore, Hong Kong and Germany) for 2 years. ASIC intends to consult as to whether the current relief settings

should continue on a long-term basis. The consultation paper containing ASIC's proposals for remaking this relief is due to be released in January 2017.

In the meantime, ASIC is interested in the following information to assist its review:

- the type of entities that rely on the foreign financial services provider relief;
- the type of activities for which entities rely on the relief; and
- the volume of business for entities that relief on the relief.

ASIC has also released Consultation Paper 268 on this and its proposal to repeal Class Order 03/824 because it considers that the relief is replicated in the Corporations Regulations. Comments on this proposal are due by 2 December 2016.

CLIFFORD CHANCE BRIEFINGS

NAFMII upgraded rules for credit derivatives

First introduced in 2010, China's credit derivatives market has remained nascent in the past few years. While western markets have focused on standardising credit derivatives following the global financial crisis, China sees greater demand in developing a well-functioned credit derivatives market to which increasing credit risks associated with financing transactions could be allocated. On 23 September 2016, the National Association of Financial Market Institutional Investors (NAFMII) amended and reissued the Rules for the Pilot Programme of Credit Risk Mitigation Instruments in the Inter-Bank Market (revised rules), aiming to further develop China's credit derivatives market.

This briefing paper discusses the revised rules.

https://www.cliffordchance.com/briefings/2016/09/nafmii_upgraded_rulesforcreditderivatives.html

Singapore High Court confirms it has the inherent power to seal court files to preserve confidentiality in related arbitration proceedings

A Singapore High Court judge has ruled, in BBW v BBX and others [2016] SGHC 190, that Singapore courts have the inherent power to grant orders to seal court files in the interests of preserving the confidentiality of related arbitration proceedings. The decision clarifies the legal basis for sealing orders, as well as the scope of section 23 of the International Arbitration Act (IAA), which grants the Court a statutory power to make directions on the publication of information relating to 'proceedings under the [IAA]'.

This briefing paper discusses the decision.

https://www.cliffordchance.com/briefings/2016/09/singapore_high_courtconfirmsithastheinheren.html

The SCA consults on proposals to regulate promotion and arranging activities in the United Arab Emirates

The United Arab Emirates' (UAE) regulator of investment services, the Securities and Commodities Authority (SCA), is currently consulting on a set of regulations (the FPARs), which would govern the promotion of financial products and the 'arranging' of financial services in the UAE outside the financial free zones. The proposals are far-reaching and would impose a heavy regulatory burden. If implemented, the FPARs would affect UAE-based firms, and could bite on firms carrying on cross-border activities into the UAE.

This briefing paper discusses the proposed FPARs and highlights areas of interest or potential impact.

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Culture of silence – does Australia's whistleblower regime need reform?

When it comes to lifting the lid on corruption in the private sector, Australian legislation does little to protect whistleblowers. Has the sage advice hear no evil, see no evil, speak no evil, taken hold and created a culture of silence in Australia's corporate environment?

Foreign bribery investigations in Australia are conducted primarily by the Australian Federal Police (AFP) which has responsibility for the investigation of these offences under the Criminal Code (Cth). However, unlike many of its overseas counterparts, the Code offers no statutory protection for whistleblowers.

This briefing paper discusses whistleblower legislation in Australia.

https://www.cliffordchance.com/briefings/2016/09/culture_of_silencedoesaustralia.html

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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